

**Legal note on ownership and rights enjoyed by the
Ferry Company in respect of the Ferry Road**

1. This legal note is split into two sections. The first section is intended to be an exposition of the relevant statutory materials and official records relating to Ferry Road. The second section contains analysis.

Statutory provisions and materials

The 1923 Act

2. Section 43 of the Bournemouth-Swanage Motor Road and Ferry Act 1923 (hereafter 'the 1923 Act') gave the Company the legal power to make a motor road.

'Subject to the provisions of this Act the Company may make and when made shall afterwards maintain upon the lands and in the line or situation and according to the levels shown on the deposited plans and sections the motor road hereinafter described together with all necessary and proper bridges approaches footways toll house gates barriers fences culverts depots offices buildings yards works and conveniences connected therewith. The motor road will be situate in the country of Dorset and is:-

A motor road (Work No. 1) 2 miles 7 furlongs 7.50 chains or thereabouts in length wholly in the parish of Studland in the rural district of Wareham and Purbeck commencing at South Haven Point and terminating by a junction with the public road ladings from Studland to Swanage.'

3. Section 36 of the 1923 Act gave the Ferry Company powers to compulsorily purchase land (by section 40 this power of compulsory purchase ceased after three years):

'Subject to the provisions of this Act the Company may enter upon take and use such of the lands delineated on the deposited plans and described in the deposited book of reference as may be required for the purposes of the undertaking'.

4. By section 41 of the 1923 Act, any previous rights of way over the lands compulsorily purchased by the Company, would be extinguished. Section 45 gave the Company powers to make junctions between the motor road, and other streets or roads, and to make alterations to those roads.
5. Section 49 gave the Company the power to make and enforce byelaws in respect of the motor road.

'Subject to the provisions of this Act the Company may from time to time make vary alter and enforce regulations and byelaws for all or any of the following purposes (that is to say):-

(a) Appropriating any portion of the motor road for the exclusive use of any particular class of vehicle or traffic;

(b) Preventing obstruction to traffic on the motor road and generally in reference to the regulation controlling and use of the motor road and the traffic therefor and the prevention of any nuisance on any premises occupied by the Company in connection with the motor road.'

6. Section 49 provided that penalties could be issued by the Company for breach of the byelaws. Such byelaws would have to be confirmed by the Minister For Transport before coming into force.
7. Section 51 stipulates that the motor road should be available for use by foot passengers at all times free of charge.
8. Section 55 described certain events which would trigger the cessation of the *'rights, powers and obligations of the Company in relation to the motor road'*, upon the occurrence of which the motor road would become a public highway. By section 55(3) this included the passage of 65 years, however this has been modified by the 1986 Act. It should be noted that the alternative to the

Company's holding of the motor road was public ownership: not a reversion to any previous owners.

9. Section 58 gave the Ferry Company the power to construct the two landing stages. Section 78 gave the Ferry Company the power to charge tolls for the motor road, section 79 the power to charge tolls for the ferry.
10. Section 97 made provisions for the '*protection and benefit*' of the Bankes Estate stating by section 97(1)

'(1)The Company shall not acquire any part of the estates of the owners or any easement or rights in or over the same other than:-

(a) Such lands as may be required by the Company for purposes connected with the undertaking extending in all to five acres of which four acres or thereabouts at or near the commencement of the motor road and one acre or thereabouts shall be situate at or near the point where the motor road joins the Knowle Hill Road and in the event of any difference arising between the Company and the owners as to the situation of such lands such difference shall be determined by arbitration...

(b) An easement in or over or right of user of the lands required for the purposes of making and maintaining the motor road and the landing stage (Work No 3), and for those purposes the owners shall convey and grant to the Company free of charge the freehold of the lands referred to in paragraph (a) and the said easement or right of user in perpetuity of the lands referred to in paragraph (b) hereof;.

11. Section 97(6) states that the owners of the Bankes' estate, their employees and agents, may use the motor road without incurring any toll. Section 97(16) provides that the land over which the Company has an easement/right of user in perpetuity may not be sold separately from it. However, this does not affect the ability of the Company to be sold, along with all its assets (as has occurred).

The 1986 Act

12. The preamble to the Bournemouth-Swanage Motor Road and Ferry Act 1986 describes its purpose, including that *'it is expedient to provide for the motor road to remain vested in the Company as part of their undertaking'* and *'for the avoidance of obstructions and delay to traffic on the motor road and for the better regulation and management of such traffic it is expedient that the Company construct the work authorised by this Act and that the other powers contained in this Act in relation to the motor road be conferred on the Company'*.
13. Section 4 of the 1986 Act provides that motor road *'shall continue to be vested in the Company'* and *'the Company may, subject to the provisions of this Act and the Act of 1923, maintain, repair, renew and improve the same with all necessary works and conveniences connected therewith'*.
14. Section 5 provides that the Company *'may...make and maintain the work described ...below with all necessary and proper works and conveniences connected therewith..... a widening and improvement of the motor road incorporating a roundabout and a marshalling area for vehicles using the ferry, commencing at National Grid reference point SZ 03458625 and terminating at National Grid reference point SZ 03608660'*
15. Section 7 provides that *'...the Company may on any land forming part of the motor road or in which they have sufficient interest or rights do any of the following things and take such other steps as may be necessary or convenience for or in connection with the management or improvement of the undertaking:-*
 - (a) *provide, set up, maintain and remove such toll houses, toll-gates, signals, officers or other conveniences for the collection of tolls and the management of the motor road and ferry as may be necessary or convenient;*
 - (b) *lay out, maintain, manage and remove such vehicle marshalling areas, lay-bys, passing places, turning circles, parking places and other facilities as may be necessary or convenient for the vehicles using the motor road or ferry;*

(c) provide, set up, maintain and remove such barriers, lights, traffic signs, signals directions and other apparatus as may be necessary or convenient for the control, segregation and direction of traffic on the motor road.'

16. Section 8 of the 1986 Act provides that the company may '*make and enforce byelaws...for the prevention of injury or damage to the motor road, any premises occupied by the Company in connection with the motor road...*' as well as byelaws to manage traffic, and relating to the inspection of tolls.

17. Section 9 of the 1986 Act states that certain planning permission rules which would otherwise apply, shall not apply in respect of any improvement of the road authorised by the Act.

1986 Agreement with the National Trust ('the 1986 Agreement')

18. As can be seen from its face, the 1986 Agreement was reached by the National Trust and the Company as part of the process of passing the 1986 Act.

19. Clause 4 of the 1986 Agreement states that '*The National Trust shall permit the Company to construct and maintain the road improvements free of charge notwithstanding that those works are in part situated on land owned by the National Trust or in which the National Trust holds an interest...*'

20. Clause 1(1) of the 1986 Agreement states that "*the road improvements*" means the work to be authorised by clause 5 (power to make work) of the Bill and, in addition, a re-siting of the Company's southern toll box in the centre of the motor road at its southern terminus together with a re-arrangement of the road at that point so as to permit vehicles to turn around the toll box, together with all necessary ancillary works. Clause 5 of the Bill became section 5 of the 1986 Act.

21. Clause 6 of the 1986 Agreement provides that *'Upon completion of the road improvements to the reasonable satisfaction of the National Trust, the National Trust shall convey to the Company free of charge **the fee simple** of any land held by the National Trust upon which the road improvements are situated...and such land shall be held and maintained by the Company as part of an subject to the same incidents as the motor road pursuant to the Bournemouth-Swanage Motor Road and Ferry Acts 1923 to 1956 and the Bill as enacted'* (emphasis added)
22. Clause 7 of the 1986 Agreement provides that *'the National Trust shall not pursuant to this clause or otherwise withhold its approval to the construction by the Company of parking places upon the verges at an angle to and, at any point, on no more than one side of the carriageway on that part of the motor road north of one acre pool'*.
23. As such by the 1986 Agreement the National Trust agreed to the Company using land going beyond the previous motor road land, including the verges and the newly-widened section of the motor road.

Land Registry records

24. As seen at [II/44-48] the North and South Slipways, the site of the ferry offices and buildings located in Studland, and a section of the road between the causeway in Studland and the ferry offices are registered in the name of the Company. As can be seen from the relevant diagram, what is described as the South Slipways, is in fact the south slipway and the causeway, leading up to the Ferry Road.
25. Importantly, the National Trust registered land does not include the Ferry Road: see statement of Ms Tracey Churcher to that effect at [II/126]. While Miss Churcher says that was an erroneous omission, no evidence substantiating the same has been adduced, and it is not understood that there has been any rectification sought by the National Trust. It is submitted that rather than being erroneous the exclusion of the Ferry Road from the National Trust's registered land is consistent with the 1923 and 1986 Acts, whereby the Ferry Company controls the land; and the land becomes a public highway if the Ferry Company

does not fulfil certain conditions. Under no circumstances do the Acts envisage or permit the reversion of that land to the Bankes' estate/National Trust.

Analysis

26. By operation of section 97(1)(a) and(b) of the 1923 Act the Company acquired the freehold of five acres of land *'of which or acres or thereabouts at or near to the commencement of the motor road and one acre of thereabout shall be situate at or near the point where the motor road joins the Knowle Hill Road'*.
27. By operation of those same sections of the 1923 Act the Company also acquired the *'easement or right of user in perpetuity of...the lands required for the purposes of making and maintaining the motor road and the landing stage'*.
28. Importantly, the easement was not just an entitlement of the Company to use the land of the motor road, but also to control that land. By section 49 of the 1923 Act the Company has the power to power to introduce (with approval) byelaws restricting the use of traffic, preventing obstructions, and generally to ensure that the land was not used by others in a way injurious to the Ferry Company's interests. By section 8 of the 1986 Act this power was reaffirmed and broadened, so that the Company could make and enforce byelaws to protect against any damage to the road and ensure its proper use.
29. By section 7 of the 1986 Act the Company became entitled to set up a broad manner of tollhouses, laybys, passing places, parking places, lights, barriers (etc) on the motor road, and to do so free of certain planning permission restrictions.
30. In addition, by section 5 of the 1986 Act the Company acquired rights over new land over which it previously neither owned nor had rights of user (being land to build a roundabout and a marshalling area for vehicles). By clause 6 of the 1986 Agreement the National Trust agreed to transfer the fee simple (i.e. freehold) of the land on which the improvements were built to the Company.

31. As such by operation of statute, the Company is the freehold owner of the slipways, ferry office sites, and either is, or is entitled to be freehold owner of the wide section of the road on the Studland site (containing various road improvements). In respect of the remainder of the road the Company enjoys full rights of user in perpetuity along with rights to build on and improve the road with additional facilities to further the Ferry Company's interests, and various powers to control the use of the Ferry Road.
32. The collection of rights and obligations that the Company has over the road are in some respects different to and greater than a normal freehold owner would have, for example the power to enforce byelaws to control the use of the road, or to make improvements without certain planning rules applying. These powers and rights are all directed towards making the motor road useful for and facilitative of the Ferry Company business (and so the users of the ferry).
33. The Ferry Company may not have the same power to dispose of the land separately from its other assets. Yet, through sale of the Company, the owners have the power to transfer their rights and powers over the motor road and other land to the new owners. Moreover, all the rights which the Company enjoys over the road are rights designed to promote the effective and smooth running of the ferry operation. As such the land supports the Company's commercial purpose.
34. It is also significant that the 1923 Act did not provide for the motor road land to revert to previous owners if the Ferry Company did not comply with certain conditions, but instead stipulated that it reverted to public ownership. This must demonstrate that the land on which the road is built is not owned by some other private person (such as the National Trust) in any ordinary sense. This is because the acts of a third private party, the ferry company, could not deprive a true owner of its land. In this connection it is noted that the National Trust's

land registry documents show that the road is not part of the National Trust's parcel of land.

35. Instead by the Acts (and 1986 Agreement) the practical use and enjoyment of that land on which the motor road was built was conveyed to the Company to use in pursuit of its interests as a ferry company. It has been valued on that basis.

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